

section, the principles of §1.954-1T(c)(1)(i) will apply to any expense subject to that subparagraph.

(k)(2) through (n) [Reserved]. For further guidance, see §1.904-5(k)(2) through (n).

(o) *Effective date.* Section 1.904-5T(k)(1) applies on or after March 23, 1998. For rules prior to March 23, 1998, see §1.904-5(k)(1).

[T.D. 8767, 63 FR 14615, Mar. 26, 1998]

§ 1.904-6 Allocation and apportionment of taxes.

(a) *Allocation and apportionment of taxes to a separate category or categories of income—(1) In general—(i) Taxes related to a separate category of income.* The amount of foreign taxes paid or accrued with respect to a separate category of income (including United States source income) shall include only those taxes that are related to income in that separate category. Taxes are related to income if the income is included in the base upon which the tax is imposed. If, for example, foreign law exempts certain types of income from foreign taxes, or certain types of income are exempt from foreign tax under an income tax convention, then no taxes are considered to be related to such income for purposes of this para-

graph. As another example, if foreign law provides for a specific rate of tax with respect to certain types of income (e.g., capital gains), or certain expenses, deductions, or credits are allowed under foreign law only with respect to a particular type of income, then such provisions shall be taken into account in determining the amount of foreign tax imposed on such income. A withholding tax (unless it is a withholding tax that is not the final tax payable on the income as described in §1.904-4(d)) is related to the income from which it is withheld. A tax that is imposed on a base that includes more than one separate category of income is considered to be imposed on income in all such categories, and, thus, the taxes are related to all such categories included within the foreign country or possession's taxable income base.

(ii) *Apportionment of taxes related to more than one separate category.* If a tax is related to more than one separate category, then, in order to determine the amount of the tax paid or accrued with respect to each separate category, the tax shall be apportioned on an annual basis among the separate categories on the basis of the following formula:

$$\text{Foreign tax related to more than one separate category} \times \frac{\text{Net income subject to that foreign tax included in a separate category}}{\text{Net income subject to that foreign tax}}$$

For purposes of apportioning foreign taxes among the separate categories, gross income is determined under the law of the foreign country or a possession of the United States to which the foreign income taxes have been paid or accrued. Gross income, as determined under foreign law, in the passive category shall first be reduced by any related person interest expense that is allocated to the income under the principles of section 954(b)(5) and §1.904-5(c)(2)(ii)(C) (adjusted gross passive income). Gross income in all separate categories (including adjusted gross passive income) is next reduced by de-

ducting any expenses, losses, or other amounts that are deductible under foreign law that are specifically allocable to the gross amount of such income under the laws of that foreign country or possession. If expenses are not specifically allocated under foreign law then the expenses will be apportioned under the principles of foreign law but only after taking into account the reduction of passive income by the application of section 954(b)(5). Thus, for example, if foreign law provides that expenses will be apportioned on a gross income basis, the gross income

amounts will be those amounts determined under foreign law except that, in the case of passive income, the amount will be adjusted gross passive income. If foreign law does not provide for the direct allocation or apportionment of expenses, losses, or other deductions to a particular category of income, then the principles of §§ 1.861-8 through 1.861-14T and section 954(b)(5) shall apply in allocating and apportioning such expenses, losses, or other deductions to gross income as determined under foreign law after reduction of passive income by the amount of related person interest allocated to passive income under section 954(b)(5) and § 1.904-5(c)(2)(ii)(C). For example, the principles of §§ 1.861-8 through 1.861-14T apply to require definitely related expenses to be directly allocated to particular categories of gross income and provide the methods of apportioning expenses that are definitely related to more than one category of gross income or that are not definitely related to any particular category of gross income. For this purpose, the apportionment of expenses required to be made under §§ 1.861-8 through 1.861-14T need not be made on other than a separate company basis. The rules in this paragraph apply only for purposes of the apportionment of taxes among separate categories of income and do not affect the computation of a taxpayer's foreign tax credit limitation with respect to a specific category of income.

(iii) *Apportionment of taxes for purposes of applying the high-tax income test.* If taxes have been allocated and apportioned to passive income under the rules of paragraph (a)(1) (i) or (ii) of this section, the taxes must further be apportioned to the groups of income described in § 1.904-4(c) (3), (4) and (5) for purposes of determining if the group is high-taxed income. Taxes will be related to income in a particular group under the same rules as those in paragraph (a)(1) (i) and (ii) of this section except that those rules shall be applied by substituting the term "group" for the term "category."

(iv) *Special rule for base and timing differences.* If, under the law of a foreign country or possession of the United States, a tax is imposed on an item of income that does not constitute in-

come under United States tax principles, that tax shall be treated as imposed with respect to general limitation income. If, under the law of a foreign country or possession of the United States, a tax is imposed on an item that would be income under United States tax principles in another year, that tax will be allocated to the appropriate separate category or categories as if the income were recognized under United States tax principles in the year in which the tax was imposed.

(2) *Treatment of certain dividends from noncontrolled section 902 corporations.* If a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation, and if the Commissioner establishes that there is an agreement, express or implied, that such dividend is paid out of the passive earnings or high withholding tax interest income of the foreign corporation, then only the foreign taxes imposed on passive income or high withholding tax interest income of the noncontrolled section 902 corporation will be considered to be taxes related to the dividend. For an illustration of this rule, see paragraph (c) *Example (7)* of this section.

(b) *Application of paragraph (a) to sections 902 and 960—(1) Determination of foreign taxes deemed paid.* If, for the taxable year, there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a controlled foreign corporation for any taxable year and the amount included consists of income in more than one separate category of the controlled foreign corporation, then the domestic corporation shall be deemed to have paid only a portion of the taxes paid or accrued, or deemed paid or accrued, by the controlled foreign corporation that are allocated to each separate category to which the inclusion is attributable. The portion of the taxes allocated to a particular separate category that shall be deemed paid by the United States shareholder shall be equal to the taxes allocated to that separate category multiplied by the amount of the inclusion with respect to that category (as determined under § 1.904-5(c)(1)) and divided by the earnings and profits of the

controlled foreign corporation with respect to that separate category (in accordance with § 1.904-5(c)(2)(ii)). The rules of this paragraph (b)(1) also apply for purposes of computing the foreign taxes deemed paid by United States shareholders of controlled foreign corporations under section 902.

(2) *Distributions received from foreign corporations that are excluded from gross income under section 959(b).* The principles of this paragraph shall be applied to—

(i) Any portion of a distribution received from a first-tier corporation by a domestic corporation or individual that is excluded from the domestic corporation's or individual's income under section 959(a) and § 1.959-1; and

(ii) Any portion of a distribution received from an immediately lower-tier corporation by a second- or first-tier corporation that is excluded from such foreign corporation's gross income under section 959(b) and § 1.959-2, if such distribution is treated as a dividend pursuant to § 1.960-2(a).

(3) *Application of section 78.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that were allocated to income in a separate category shall be treated as income in that same separate category.

(4) *Increase in limitation.* The amount of the increase in the foreign tax credit limitation allowed by section 960(b) and § 1.960-4 shall be determined with regard to the applicable category of income under section 904(d).

(c) *Examples.* The following examples illustrate the application of this section.

Example 1. M, a domestic corporation, conducts business in foreign country X. M earns \$400 of shipping income, \$200 of general limitation income and \$200 of passive income as determined under foreign law. Under foreign law, none of M's expenses are directly allocated or apportioned to a particular category of income. Under the principles of §§ 1.861-8 through 1.861-14T, M apportions \$75 of directly allocable expenses to shipping income, \$10 of directly allocable expenses to general limitation income, and no such expenses to passive income. M also apportions expenses that are not directly allocable to a specific class of gross income—\$40 to shipping income, \$20 to general limitation income, and \$20 to passive income. Therefore, for pur-

poses of paragraph (a) of this section, M has \$285 of net shipping income, \$170 of net general limitation income, and \$180 of net passive income. Country X imposes tax of \$100 on a base that includes M's shipping income and general limitation income. Country X exempts passive income from tax. The tax paid by M is related to M's shipping and general limitation income. The \$100 tax is apportioned between those limitations. Thus, M is considered to have paid \$63 of X tax on its shipping income ($\$100 \times \$285 / \$455$) and \$37 of tax on its general limitation income ($\$100 \times \$170 / \$455$). None of the X tax is allocated to M's passive income.

Example 2. The facts are the same as in example 1 except that X does not exempt all passive income from tax but only exempts interest income. M's passive income consists of \$100 of gross dividend income, to which \$10 of expenses that are not directly allocable are apportioned, and \$100 of interest income, to which \$10 of expenses that are not directly allocable are apportioned. The \$90 of net dividend income is subject to X tax, and \$90 of net interest income is exempt from X tax. M pays \$130 of tax to X. The \$130 of tax is related to M's general, shipping, and passive income. The tax is apportioned among those limitations as follows: \$68 to shipping income ($\$130 \times \$285 / \545), \$41 to general limitation income ($\$130 \times \$170 / \$545$), and \$21 to passive income ($\$130 \times \$90 / \$545$).

Example 3. P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X. S owns 100 percent of T, a controlled foreign corporation that is also organized in country X. Country X grants group relief to S and T. In 1987, S earns \$100 of income and T incurs an \$80 loss. Under country X's group relief provisions, only \$20 of S's income is subject to country X tax. Country X imposes a 30 percent tax on this income (\$6). P includes \$100 of S's income in gross income under section 951. Six dollars (\$6) of foreign tax is related to that income for purposes of section 960.

Example 4. P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X and 100 percent of T, a controlled foreign corporation organized in country Y. T has \$200 of gross manufacturing general limitation income and \$50 of passive income. T also pays S \$100 for shipping T's goods, a price that may be justified under section 482. T has no other expenses and S has no other income or expense. T's income and earnings and profits are the same. Foreign country X does not tax S on its shipping income. Foreign country Y taxes all of T's income at a rate of 20 percent. Under the law of foreign country Y, T is only allowed a \$50 deduction for the payment to S. Therefore, for foreign law purposes, T has \$150 of manufacturing income and earnings and profits and \$50 of passive income and earnings and profits upon which it pays \$40

of tax. Under the principles of foreign law, \$30 of that tax is imposed on the general limitation manufacturing income and \$10 of the tax is imposed on passive income. Therefore, the foreign effective rate on the general limitation income is 30 percent and the foreign effective rate on the passive income is 20 percent. T has \$100 of general limitation income and \$50 of passive income and pays \$30 of general limitation taxes and \$10 of passive taxes. S has \$100 of shipping income and pays no foreign tax.

Example 5. R, a domestic corporation, owns 50 percent of T, a foreign corporation that is not a controlled foreign corporation and that is organized in foreign country X. R licenses certain property to T. T then relicenses this property to a third person. In 1987, T paid R a royalty of \$100 all of which is treated as passive income to R because it was not an active royalty as defined in § 1.904-4(b)(2). R has \$10 of expenses associated with the royalty income and no foreign tax was imposed on the royalty so the high-tax kickout does not apply. In 1988, the Commissioner determined that the correct arm's length royalty was \$150 and under the authority of section 482 reallocated an additional \$50 of income to R for 1987. Under a closing agreement with the Commissioner, R elected the benefits of Rev. Proc. 65-17 in relation to the income reallocated from R and established an account receivable from T. In 1988, T paid R an additional \$50 to reflect the section 482 adjustment and the account receivable that was established because of the adjustment. Foreign country X treats the \$50 payment in 1988 as a dividend by T and imposes a \$10 withholding tax on the payment. Under paragraph (a)(1) of this section, the \$10 of withholding tax is treated as fully allocable to the \$50 payment because under foreign law the tax is imposed only on that income. For U.S. purposes, the income is not characterized as a dividend but as a repayment of a bona fide debt and, therefore, the \$50 of income is not required to be recognized by R in 1988. The \$10 of tax is treated as a tax paid in 1988 on the \$50 of passive income included by R in 1987 pursuant to the section 482 adjustment rather than as a tax associated with a dividend from a noncontrolled section 902 corporation. The \$10 tax is a tax imposed on passive income under paragraph (a)(1)(iv) of this section.

Example 6. P, a domestic corporation owns all of the stock of S, a controlled foreign corporation that is incorporated in country X. In 1989, S has \$100 of passive income, \$200 of dividends from a noncontrolled section 902 corporation and \$200 of general limitation income. S also has \$100 of related person interest expense and \$100 of other expenses that under foreign law are directly allocable to the general limitation income of S. S has no other expenses. Country X imposes a tax of 25% on all of the net income of S and S,

therefore, pays \$75 in foreign tax. Under paragraph (a)(1)(ii) of this section, the passive income of S is first reduced by the amount of related person interest for purposes of determining the net amount for purposes of allocating the \$75 of tax. Under paragraph (a)(1)(ii) of this section, the general limitation income of S is reduced by the \$100 of other expenses. Therefore, \$50 of the foreign tax is allocated to the dividends from a noncontrolled section 902 corporation ($\$50 = \$75 \times \$200 / \300). \$25 is allocated to the general limitation income of S ($\$25 = \$75 \times \$100 / \300), and no taxes are allocated to S's passive income.

Example 7. R, a domestic corporation owns preferred stock in T, a foreign corporation that is not a controlled foreign corporation, incorporated in foreign country X. R's stock represents 15 percent of the value of T. Dividends on the preferred stock are paid only out of certain designated passive investments of T. Foreign country X does not tax the passive income of T. Under paragraph (a)(2) of this section, no taxes will be considered to be related to any dividend paid by T to R.

Example 8. Domestic corporation P owns all of the stock of controlled foreign corporation S, which owns all of the stock of controlled foreign corporation T. All such corporations use the calendar year as the taxable year. Assume that earnings and profits are equal to net income and that the income amounts are identical under United States and foreign law principles. In 1987, T earns (before foreign taxes) \$187.50 of net passive income and \$62.50 of net general limitation income and pays \$50 of foreign taxes. S earns no income in 1987 and pays no foreign taxes. For 1987, P is required under section 951 to include in gross income \$175 attributable to the earnings and profits of T for that year. One hundred and fifty dollars (\$150) of the subpart F inclusion is attributable to passive income earned by T, and \$25 of the subpart F inclusion is attributable to general limitation income earned by T. In 1988, T earns no income and pays no foreign taxes. T pays a \$200 dividend to S, consisting of \$175 from its earnings and profits attributable to amounts required to be included in P's gross income with respect to T and \$25 from its other earnings and profits. Assume that no withholding tax is imposed with respect to the distribution from T to S. In 1988, S earns \$100 of net general limitation income and receives a \$200 dividend from T. S pays \$30 in foreign taxes. For 1988, P is required under section 951 to include in gross income \$22.50 attributable to the earnings and profits of S for such year. The entire subpart F inclusion is attributable to general limitation income earned by S. In 1988, S pays P a dividend of \$247.50, consisting of \$157.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross

income with respect to T, \$22.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to S, and \$67.50 from its other earnings and profits. Assume the de minimis rule of section 954(b)(3)(A) and the full inclusion rule of section 954(b)(3)(B) do not apply to the gross amounts of income earned by S and T. The foreign income taxes deemed paid by P for 1987 and 1988 under section 960(a)(1) and section 902(a) are determined as follows on the basis of the following facts and computations.

T corporation (second-tier corporation):

1. Pre-tax earnings and profits:		
(a) Passive income (p.i.)	187.50	
Plus:		
(b) General limitation income (g.l.i.)	62.50	
(c) Total	250.00	
Less:		
(d) Foreign income taxes paid on or with respect to T's earnings and profits (20%)	50.00	
(e) Earnings and profits		200.00
2. Allocation of taxes:		
(a) Foreign income taxes paid by T that are allocable to p.i. earned by T:		
Line 1(d) taxes	50.00	
Multiplied by: foreign law net p.i.	187.50	
Divided by: foreign law total net income	250.00	
Result		37.50
(b) Foreign income taxes paid by T that are allocable to g.l.i. earned by T:		
Line 1(d) taxes	50.00	
Multiplied by: foreign law net g.l.i.	62.50	
Divided by: foreign law total net income	250.00	
Result		12.50

3. T's earnings and profits:		
(a) Earnings and profits attributable to T's p.i.:		
Line 1(a) e & p	187.50	
Less: line 2(a) taxes	37.50	
Result		150.00
(b) Earnings and profits attributable to T's g.l.i.:		
Line 1(b) e & p	62.50	
Less: line 2(b) taxes	12.50	
Result		50.00
4. Subpart F inclusion attributable to T:		
(a) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's p.i.		150.00
(b) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's g.l.i.		25.00
5. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to T:		
(a) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's p.i.:		
Line 2(a) taxes	37.50	
Multiplied by: line 4(a) sec. 951 incl.	150.00	
Divided by: line 3(a) e & p	150.00	
Result:		37.50

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(b) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's g.l.i.:			Multiplied by:		
Line 2(b) taxes	12.50		line 6(d) dividend	25.00	
Multiplied by:			Dividend by: line		
line 4(b) sec. 951 incl.	25.00		3(b) e & p	50.00	
Divided by: line					
3(b) e & p	50.00				
Result		6.25	Result		6.25
6. Dividends paid to S:			<i>S corporation (first-tier corporation):</i>		
(a) Dividends attributable to T's previously taxed p.i.	150.00		8. Pre-tax earnings and profits:		
Plus:			(a) Dividends from T attributable to T's non-previously taxed p.i.	0	
(b) Dividends attributable to T's previously taxed g.l.i.	25.00		Plus:		
Plus:			(b) Dividends from T attributable to T's non-previously taxed g.l.i.	25	
(c) Dividends from T's non-previously taxed earnings and profits attributable to p.i.	0		Plus:		
Plus:			(c) Dividends from T attributable to T's previously taxed p.i.	150	
(d) Dividends from T's non-previously taxed earnings and profits attributable to g.l.i.	25.00		Plus:		
			(d) Dividends from T attributable to T's previously taxed g.l.i.	25	
			Plus:		
(e) Total dividends paid to S	200.00		(e) Passive income other than dividend from T	0	
7. Taxes deemed paid by S:			Plus:		
(a) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's p.i.:			(f) General limitation income other than dividend from T	100.00	
Line 2(a) taxes	37.50				
Multiplied by:			(g) Total pre-tax earnings and profits	300.00	
line 6(c) dividend	0		(h) Foreign income taxes paid on or with respect to S's earnings and profits (10%)	30.00	
Dividend by: line					
3(a) e & p	150.00		(i) Earnings and profits	270.00	
Result		0	9. Allocation of taxes:		
(b) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's g.l.i.:			(a) Foreign income taxes paid by S that are allocable to non-previously taxed p.i. earned by S:		
Line 2(b) taxes	12.50		Line 8(h) taxes	30.00	
			Multiplied by: foreign law line		
			8(a) & 8(e) p.i. amounts	0	

Dividend by: foreign law total net income	300.00		(c) Portion of result in 10(a) attributable to S's g.l.i.	112.50
Result		0	11. (a) Previously taxed earnings and profits of S:	
(b) Foreign income taxes paid by S that are allocable to S's previously taxed p.i. received from T:			Lines 8(c) and 8(d) e & p	175.00
Line 8(h) taxes	30.00		Less: lines 9(b) & 9(d) taxes	17.50
Multiplied by: foreign law line 8(c) p.i. amount	150.00		Result	157.50
Divided by: foreign law total net income	300.00		(b) Portion of result in 11(a) attributable to T's p.i.:	
Result		15.00	Line 8(c)	150.00
(c) Foreign income taxes paid by S that are allocable to non-previously taxed g.l.i. earned by S:			Less: line 9(b) taxes	15.00
Line 8(h) taxes	30.00		Result	135.00
Multiplied by: foreign law line 8(b) & line 8(f) g.l.i. amounts ...	125.00		(c) Portion of result in 11(a) attributable to T's g.l.i.:	
Divided by: foreign law total net income	300.00		Line 8(d)	25.00
Result		12.50	Less: line 9(d) taxes	2.50
(d) Foreign income taxes paid by S that are allocable to S's previously taxed g.l.i. received from T:			Result	22.50
Line 8(h) taxes	30.00		12. Subpart F inclusion attributable to S:	
Multiplied by: foreign law line 8(d) amount	25.00		(a) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's p.i.	0
Divided by: foreign law total net income	300.00		(b) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's g.l.i.	22.50
Result		2.50	13. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to S:	
10. (a) Non-previously taxed earnings and profits of S:			(a) Taxes deemed paid that are attributable to S's subpart F inclusion that are attributable to S's p.i.:	
Lines 8(a), 8(b), 8(e), & 8(f) e & p	125.00		Line 9(a) taxes	0
Less: lines 9(a) & 9(c) taxes	12.50			
Result		112.50		
(b) Portion of result in 10(a) attributable to S's p.i. ...		0		

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(c) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's p.i.:		
Line 7(a) deemed paid taxes	0	
Multiplied by: line 14(c)(iii) div.	0	
Divided by: line 10(b) e & p	0	
Result		0
(d) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's g.l.i.:		
Line 7(b) deemed paid taxes	6.25	
Multiplied by: line 14(c)(iv) div.	67.50	
Divided by: line 10(c) e & p	112.50	
Result		3.75
(e) Foreign income taxes paid by S under section 960(a)(3) deemed paid by P with regard to S's previously taxed p.i.:		
Line 9(b) taxes	15.00	
Multiplied by: line 14(c)(i) div.	135.00	
Divided by: line 11(b) e & p	135.00	
Result		15.00
(f) Foreign income taxes paid by S under section 960(a)(3) deemed paid by P with regard to S's previously taxed g.l.i.:		
Line 9(d) taxes	2.50	
Multiplied by: line 14(c)(ii) div.	22.50	
Divided by: line 11(c) e & p	22.50	
Result		2.50

Summary:		
Total taxes deemed paid by P under section 960(a)(1) with respect to—		
Passive income of S and T included under section 951 in income of P:		
Line 5(a)	37.50	
Plus:		
Line 13(a)	0	
Plus:		
Line 13(c)	0	
Result	37.50	
General limitation income of S and T included under section 951 in income of P:		
Line 5(b)	6.25	
Plus:		
Line 13(b)	2.50	
Plus:		
Line 13(d)	1.25	
Result	10.00	
Total deemed paid taxes under section 960(a)(1)		
	47.50	
Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to passive income of S and T (line 15(e))		
		15.00
Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to general limitation income of S and T:		
Line 15(b)	7.50	
Plus:		
Line 15(d)	3.75	
Plus:		
Line 15(f)	2.50	
Result	13.75	

[T.D. 8214, 53 FR 27029, July 18, 1988, as amended by T.D. 8412, 57 FR 20652, May 14, 1992]